

§ 158.301

(d) When the Secretary determines that the payment of rebates by an issuer will cause its RBC level to fall below the Company Action Level RBC, the Secretary may permit a deferral of all or a portion of the rebates owed, but only for a period determined by the Secretary in consultation with the State. The Secretary will require that the issuer must pay these rebates with interest in a future year in which payment of the rebates would not cause the issuer's RBC level to fall below the Company Action Level RBC.

Subpart C—Potential Adjustment to the MLR for a State's Individual Market

§ 158.301 Standard for adjustment to the medical loss ratio.

The Secretary may adjust the MLR standard that must be met by issuers offering coverage in the individual market in a State, as defined in section 2791 of the PHS Act, for a given MLR reporting year if, in her discretion, she determines that application of the 80 percent MLR standard of section 2718(b)(1)(A)(ii) of the Public Health Service Act may destabilize the individual market in that State. Application of the 80 percent MLR standard may destabilize the individual market in a State only if there is a reasonable likelihood that application of the requirement will do so.

§ 158.310 Who may request adjustment to the medical loss ratio.

A request for an adjustment to the MLR standard for a State must be submitted by the State's insurance commissioner, superintendent, or comparable official of that State in order to be considered by the Secretary.

§ 158.311 Duration of adjustment to the medical loss ratio.

A State may request that an adjustment to the MLR standard be for up to three MLR reporting years.

§ 158.320 Information supporting a request for adjustment to the medical loss ratio.

A State must submit in electronic format the information required by §§ 158.321 through 158.323 of this subpart

45 CFR Subtitle A (10–1–11 Edition)

in order for the request for adjustment to the MLR standard for the State to be considered by the Secretary. A State may submit to the Secretary any additional information it determines would support its request. In the event that certain data are unavailable or that the collection of certain data is unduly burdensome, a State may provide written notice to the Secretary and the Secretary may, at her discretion, request alternative supporting data or move forward with her determination.

§ 158.321 Information regarding the State's individual health insurance market.

(a) *State MLR standard.* The State must describe its current MLR standard for the individual market, if any, and the formula used to assess compliance with such standard.

(b) *State market withdrawal requirements.* The State must describe any requirements it has with respect to withdrawals from the State's individual health insurance market. Such requirements include, but are not limited to, any notice that must be provided and any authority the State regulator may have to approve a withdrawal plan or ensure that enrollees of the exiting issuer have continuing coverage, as well as any penalties or sanctions that may be levied upon exit or limitations on re-entry.

(c) *Mechanisms to provide options to consumers.* The State must describe the mechanisms available to the State to provide consumers with options in the event an issuer withdraws from the individual market. Such mechanisms include, but are not limited to, a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high risk pool. A description of each mechanism should include detail on the issuers participating in and products available under such mechanism, as well as any limitations with respect to eligibility, enrollment period, total enrollment, and coverage for pre-existing conditions.

(d) *Issuers in the State's individual market.* Subject to § 158.320 of this subpart, the State must provide:

(1) For each issuer who offers coverage in the individual market in the State its number of individual enrollees by product, available individual premium data by product, and individual health insurance market share within the State; and

(2) For each issuer who offers coverage in the individual market in the State to more than 1,000 enrollees, the following additional information:

(i) Total earned premium on individual market health insurance products in the State;

(ii) Reported MLR pursuant to State law for the individual market business in the State;

(iii) Estimated MLR for the individual market business in the State, as determined in accordance with §158.221 of this part;

(iv) Total agents' and brokers' commission expenses on individual health insurance products;

(v) Estimated rebate for the individual market business in the State, as determined in accordance with §158.221 and §158.240 of this part;

(vi) Net underwriting profit for the individual market business and consolidated business in the State;

(vii) After-tax profit and profit margin for the individual market business and consolidated business in the State;

(viii) Risk-based capital level; and

(ix) Whether the issuer has provided notice of exit to the State's insurance commissioner, superintendent, or comparable State authority.

§ 158.322 Proposal for adjusted medical loss ratio.

A State must provide its own proposal as to the adjustment it seeks to the MLR standard. This proposal must include:

(a) An explanation and justification of how the proposed adjustment to the MLR was determined;

(b) An explanation of how an adjustment to the MLR standard for the State's individual market will permit issuers to adjust current business models and practices in order to meet an 80 percent MLR as soon as is practicable;

(c) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet an 80 percent

MLR for the applicable MLR reporting years; and

(d) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet the adjusted MLR proposed by the State for the applicable MLR reporting years.

§ 158.323 State contact information.

A State must provide the name, telephone number, e-mail address, and mailing address of the person the Secretary may contact regarding the request for an adjustment to the MLR standard.

§ 158.330 Criteria for assessing request for adjustment to the medical loss ratio.

The Secretary may consider the following criteria in assessing whether application of an 80 percent MLR, as calculated in accordance with this subpart, may destabilize the individual market in a State that has requested an adjustment to the 80 percent MLR:

(a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State. In making this determination the Secretary may consider as to each issuer that is reasonably likely to exit the State:

(1) Each issuer's MLR relative to an 80 percent MLR;

(2) Each issuer's solvency and profitability, as measured by factors such as surplus level, risk-based capital ratio, net income, and operating or underwriting gain;

(3) The requirements and limitations within the State with respect to market withdrawals; and

(4) Whether each issuer covers less than 1,000 life-years in the State's individual insurance market.

(b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR.

(c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.